

To: Bankruptcy/UCC Committee

From: Jeff Davis, Chair Judgment Lien Task Force

Re: Proposed Judgment Lien Legislation

Date: August 21, 2020

This task force proposes a number of legislative amendments that will clarify and expand the Florida judgment lien on personal property.

I. Obtaining Notation of a Judgment Lien on Certificates of Title

The judgment lien statute, s. 55.200, states that the lien attaches to all personal property in this state subject to execution. Unfortunately, in 2005, the used car dealers modified the certificate of title statute making clear that a judgment lien on motor vehicles and mobile homes, while enforceable against the owner, is not enforceable against creditors or subsequent purchasers for value unless noted on the certificate of title. This created ambiguity in our judgment lien statute. The statute implies that a judgment lien will be enforceable against all subsequent interest holders, but this is no longer correct as to motor vehicles and mobile homes unless noted on the certificate of title. So our first job is to eliminate the ambiguity by clarifying the judgment lien statute, and our second job, in order to properly effectuate the judgment lien on such property, is to create a process through which the lien holder can cause the Department of Highway Safety and Motor Vehicles to note the lien on certificates of title. We have determined that there are two possible approaches to achieving this and we propose to facilitate both. The first is to modify the certificate-of-title statute creating a procedure through which a judgment lien holder obtains a statutory right to cause the DHSMV to note its lien on the certificate of title of a judgment debtor's motor vehicle or mobile home. The amendatory statutory language we recommend is provided below in Part IIIA.

A second procedure through which a holder of a judgment lien can obtain notification of the lien on a certificate of title is to obtain a court order instructing the DHSMV to note the lien on the certificate. Numerous judgment lien holders have done this by bringing a lawsuit seeking such a court order. However, such a court order can also be obtained more simply by motion through proceedings supplementary to execution. We propose to further simplify this process by stating explicitly in the judgment lien statute that this procedure is available, and by amending Proceedings Supplementary to state explicitly that on presentation of a copy of a recorded judgment lien certificate, a court conducting proceedings supplementary shall order the DHSMV to note the lien on the certificate of title. The amendatory statutory language we recommend is provided below in Part IIIB.

II. Expanding the scope of the Florida Judgment Lien on Personal Property to include certain intangible rights and specifying that the lien may be enforced only through judicial process.

As stated above, the reach of the current judgment lien extends only to “all personal property in this state subject to execution under s. 56.061.” That is, it extends only to tangible personal property that can be levied upon. Some judgment debtors, however own valuable intangible property such as royalty rights, rights to receive rents, or rights to receive payment for the sale of goods sold or services. There is no reason why a judgment lien should not attach to such property if it can be workably achieved. After lengthy discussions, we recommend expanding the scope of the judgment lien to include accounts and payment intangibles as defined in Article Nine of the UCC of a judgment debtor that is located in Florida, borrowing also the definition of “location” from Article Nine. The limitation to the intangible property of a judgment debtor that is located in Florida is needed to minimize uncertainty as to jurisdiction and due process. The amendatory language we recommend here is provided below in Part IIIC.

A second amendment to the judgment lien statute will clarify that the means of enforcing the judgment lien are limited to judicial process, and that it may not be enforced through self-help repossession or replevin. Apparently, some judgment lien holders have attempted self-help repossession, which was never intended, and deprives the judgment debtor of the opportunity to claim that the property is to any extent exempt. The amendatory statutory language we recommend here is provided below in Part IIID.

III. Proposed Amendments (in italics).

IIIA. Amendments to the certificate of title statute, F.S. ss. 319.24(2), (4), (5), and 319.241.

s. 319.24(2) Sixth sentence.

If the application for certificate shows the name of a first lienholder as shown by the records of the department, *or if the application does not show the name of a judgment lienholder as shown by the records of the department*, the certificate shall not be issued to any person until after all parties who appear to hold a lien and the applicant for the certificate have been notified of the conflict in writing by the department.

s. 319.24(4)

(4) If the owner of the motor vehicle or mobile home, as shown on the title certificate, or the director of the state child support enforcement program, or the director's designee desires to place a second or subsequent lien or encumbrance against the motor vehicle or mobile home when the title certificate is in the possession of the first lienholder, the owner shall send a written request to the first lienholder by certified mail, and such first lienholder shall forward the certificate to the department for endorsement. If the title certificate is in the possession of the owner, the owner shall forward the certificate to the department for endorsement. *If the*

*holder of a judgment lien on personal property of the owner acquired under s. 55.202(2) desires to place a lien on the motor vehicle or mobile home, the judgment lien holder shall send a written request to the person in possession of the title certificate by certified mail and that person shall forward the certificate to the department for endorsement. The department shall return the certificate to either the first lienholder or to the owner, as indicated in the notice of lien filed by the first lienholder, after endorsing the second or subsequent lien on the certificate and on the duplicate. If the first lienholder or owner fails, neglects, or refuses to forward the certificate of title to the department within 10 days from the date of the owner's, the judgment lienholder's, the director's or designee's request, the department, on the written request of the subsequent lienholder or an assignee thereof, shall demand of the first lienholder or owner return of such certificate for the notation of the second or subsequent lien or encumbrance. If the first lienholder or owner fails, neglects, or refuses to return the certificate to the department as requested, the department shall void the certificate of title and issue a replacement certificate showing the notation of the subsequent lien or encumbrance.*

s. 319.24(5)(a) First sentence.

Upon satisfaction of any first lien, *judgment lien*, or encumbrance recorded at the department, *or upon lapse of a judgment lien*, the owner of the motor vehicle or mobile home, as shown on the title certificate, or the person satisfying the lien shall be entitled to demand and receive from the lienholder a satisfaction or lien.

s. 319.24(5)(b) First sentence.

Following satisfaction of a lien, *or satisfaction of or lapse of a judgment lien*, the lienholder shall enter a satisfaction thereof in the space provided on the face of the certificate of title.

s. 319.241

The owner of a motor vehicle or mobile home upon which a lien has been filed with the department or noted upon a certificate of title for a period of 5 years may apply to the department in writing for such lien to be removed from the department files or from the certificate of title. The application shall be accompanied by evidence satisfactory to the department that the applicant has notified the lienholder by certified mail, not less than 10 days prior to the date of the application, of his or her intention to apply to the department for removal of the lien. Ten days after receipt of the application, the department the department may remove the lien from its files or from the certificate of title, as the case may be, if no statement in writing protesting removal of the lien is received by the department from the lienholder within the 10-day period. If, however, the lienholder files with the department within the 10-day period a written statement that the lien is still outstanding *or that a second judgment lien certificate has been filed with the Department of State*, the department shall not remove the lien until the lienholder presents a satisfaction of lien to the department. *If a second judgment lien certificate has been filed with the Department of State, the department shall remove the notice of the first judgment lien certificate and note at the end of all noted liens notation of the second judgment lien certificate.* Ten days after the receipt of an

application for a derelict motor vehicle certificate and notification to the lienholder, the department may remove the lien from the derelict motor vehicle record if a written statement protesting removal of the lien is not received by the department from the lienholder within the 10-day period.

IIIB. Clarifying the effect of a certificate of title and facilitating obtaining notation of a judgment lien on a certificate of title through proceedings supplementary to execution.

Subsection (5) shall be added to s. 55.205 as follows:

*(5)(a) Motor Vehicles, Mobile homes and Vessels. If the personal property of the judgment debtor, to the extent not exempt from execution, includes a motor vehicle, mobile home or vessel for which a Florida certificate of title has been issued, a judgment lien acquired under this section on such property not yet noted on the certificate of title is valid and enforceable against the judgment debtor, but such a judgment lien is not enforceable against creditors or subsequent purchasers of such property for valuable consideration whose interests have been noted on the certificate of title as provided in s. 319.27.*

*(b) A Judgment lien holder may obtain an order instructing the Department of Highway Safety and Motor Vehicles to note the lien on the certificate of title through a court a court of competent jurisdiction conducting Proceedings Supplementary s. 56.29(6)(b).*

Subsection 56.29(6) shall be renumbered 56.29(6)(a).

Subsection 56.29(6)(b) shall be added as follows:

*(b) If the personal property of the judgment debtor includes a motor vehicle, mobile home, or vessel that is to any extent nonexempt from execution and for which a Florida certificate of title has been issued, on presentation of a copy of a valid judgment lien certificate acquired under s. 55.202, the court shall order the Department of Highway Safety and Motor Vehicles to note the lien of the judgment creditor on the certificate of title and in the records of the Department of Highway Safety and Motor Vehicles.*

IIIC. Expanding the reach of the Florida Judgment Lien on Personal Property to include certain intangibles.

Subsection 56.202(2) shall be amended as follows:

*(2) A judgment lien may be acquired on a judgment debtor's interest in all personal property in this state subject to execution under s. 56.061, as well as all payment intangibles and accounts as defined in s. 679.1021 of a judgment debtor that is located in this state as defined in s. 679.3071, other than fixtures, money, negotiable instruments, and mortgages.*

IIID. Clarifying that the Florida Judgment Lien on Personal Property may be enforced only through judicial process.

There shall be added to s. 55.205 the following subsection (6).

s. 55.205(6)

*A judgment lien acquired under s. 55.202 is to be enforced only through judicial process such as attachment (ch 76), execution (ch 56), garnishment (ch 77), charging order (ss. 605.0503, 620.1703 and 620.8504), and proceedings supplementary to execution (s. 56.29). A judgment lien may not be enforced through self-help repossession or replevin without the express consent of the judgment debtor.*